

## REMARKS

Applicants appreciate the courtesies extended by Examiner Leslie Wong during an interview on August 21, 2003 with Jean Archambault and Applicants' representative, Jeffrey A. Wolfson. The comments appearing herein are substantially in accord with those presented and discussed during the interview.

Claims 1-13, as amended, are pending for the Examiner's review and consideration. Claim 1 has been amended to clarify that the fresh whole milk is present in an amount sufficient to provide organoleptic qualities which characterize fresh milk (*See, e.g.,* Specification at page 2, lines 10-12 and page 3, lines 5-8). The claims have also been renumbered so the second set of claims 6-7 are now claims 8-9, with the subsequent claims renumbered as claims 10-13. These claims are all dependent, and as such, no further clarifying amendments are required. The amendment does not add any new matter, and as such the claims are in condition for allowance at this time.

Claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,223,299 to Dalan et al. ("Dalan") on page 2 of the Office Action. Dalan is alleged to teach a process for producing evaporated milk by mixing whey with a milk product to form a lactic product, heating and concentrating, heat treating and homogenizing the concentrate, *etc.* Dalan does not disclose mixing a whey product with fresh whole milk, as presently recited. Moreover, Dalan is not taught to provide the organoleptic qualities which characterize fresh milk, as now recited. Therefore, Dalan does not teach each and every recited feature. As such, Applicants respectfully submit that the rejection under 35 U.S.C. § 102(b) has been overcome and should be withdrawn.

Claims 2-13 were rejected under 35 U.S.C. § 103(a) as obvious over Dalan in view of U.S. Patent No. 5,906,847 to Engel et al. ("Engel") on pages 2-3 of the Office Action. Engel is alleged to disclose mixing a whey product solution with a milk source and to further process the same. The Office Action acknowledges that the claims further differ as to the use of a calcium sequestering agent and carrageenan, stating instead that they are used for no more than their art recognized purpose.

Dalan and Engel, even in combination, fail to teach a process of preparing an evaporated milk product that includes mixing a whey product with fresh whole milk to form a lactic solution. Moreover, the references together also fail to teach that the fresh whole milk is present in an amount sufficient to provide organoleptic qualities which characterize fresh milk, as presently recited.

The present invention also differs from Engel by including an additional, important step which concentrates the mixture of a whey product and a fresh milk product, preferably by evaporation (*See*, Specification, page 2, third full paragraph; also, claim 1 above). Engel simply does not mention the possibility or the requirement of an concentration or evaporation step to concentrate the lactose solution, nor would one be suggested since Engle's product is different from that of the present invention.

Moreover, the process of Engel is based on a sequential dissolution of the whey proteins, and then of milk with no evaporation of the whey proteins as it is a recombination. As a result, it is not possible with the process taught by Engel to preserve the organoleptic qualities of that product to be close to those which characterize fresh milk (Specification, page 1, last full paragraph) and which are characteristic of the products of the present invention. Further, evaporation equipment and processes are complicated and commercially feasible only under certain circumstances, such that those of ordinary skill in the art would not have been motivated to include such an evaporation process without a substantial justification, which was not present in the prior art.


The present invention overcomes the deficiencies of Engel by using whole milk as the milk source as well as including an additional step of concentrating the lactic solution by evaporation. In this way, the present invention surprisingly and unexpectedly minimizes or avoids the cooked flavor generally associated with concentration by evaporation by starting with fresh milk. A cooked flavor is typically a problem for the taste of whey-type products, however, the unexpected improvement in the organoleptic properties of the evaporated milk product of the present invention supports the patentability of claim 1 over Engle, even in combination with Dalan. Also, proteins are typically heat sensitive and The dependent claims of the present application define additional features of the invention that further distinguish the invention from the Engle patent. Even the combination of Dalan and Engel does not teach the fresh whole milk as a milk source and does not teach a concentration or evaporation step, particularly to provide organoleptic qualities which characterize fresh milk, as discussed at the interview. Thus, Applicants respectfully submit that the rejection under 35 U.S.C. § 103(a) has been overcome and should be reconsidered and withdrawn.

In view of the above, all rejections have been overcome and should be withdrawn. Accordingly, the entire application is believed to be in condition for allowance, early notice of which would be appreciated. Should the Examiner not agree, then a personal

or telephonic interview is respectfully requested to discuss any remaining issues and expedite the eventual allowance of the claims.

Respectfully submitted,

Date: 8/25/03

  
Jeffrey A. Wolfson (Reg. No. 42,234)  
For: Allan A. Fanucci (Reg. No. 30,256)

**WINSTON & STRAWN LLP**  
**CUSTOMER NO. 28765**

(202) 371-5770